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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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LLEWELLYN ANGELO WILLIAMS,

Plaintiff,

-against-

PLAINTIFF'S RULE 56.1 COUNTER STATEMENT IN OPPOSITION TO DEFENDANTS MOTION FOR SUMMARY JUDGEMENT

THE CITY OF NEW ROCHELLE, THE CITY OF NEW ROCHELLE POLICE DEPARTMENT, SERGEANT DANIEL CONCA, SERGEANT JOHN INZEO, SERGEANT KYLE WILSON, POLICE OFFICER EDWARD SILLER

Docket No. 13-CV-3315 (NSR)

. Defendants.
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Plaintiff Llewellyn Angelo Williams, respectfully submits the following statement opposing the Defendants statement of undisputed facts pursuant to Rule 56.1 of the Local Rules of the Southern District of New York.

A. Parties

1. No dispute

2. Plaintiff does not dispute that all of the claims against the New Rochelle Police Department (the "NRPD") were dismissed pre-dating October 6, 2011 and that the

Plaintiff's Fifth amended complaint should have omitted the New Rochelle Police Department by the Court's decision on May 29, 2014. See *Williams v. City of New Rochelle*, 2014 U.S. Dist. LEXIS 74111 (S.D.N.Y. 2014), (**Exhibit A**); but the Court allowed the New Rochelle Police Department to remain as a defendant in this case for the Fifth and Sixth amended complaint. (**Exhibit B**), Copies of amended complaints that were submitted to the Court demonstrating that the New Rochelle Police Department remained as a defendant in this case.

3. No dispute

4. No dispute

5. No dispute

6. No dispute

7. No dispute

8. No dispute

B. Pertinent Facts and Procedural History

Background

9. No dispute

10. No dispute

11. No dispute

12. No dispute

13. Plaintiff admits that Chapter 316 specified "in the event that an operator boots an unoccupied vehicle on privately owned real property, the operator must remove the boot from the vehicle within 15 minutes after being contacted by the owner of

operator". New Rochelle City Code § 316-3.1(D), (**Exhibit C**), but Chapter 316 fails to take into consideration towing companies that boot in other cities, and do not have the resources available to remove a boot within 15 minutes.

14. No dispute

15. Plaintiff does not dispute that Safeway Towing ("Safeway"), is a corporation existing under the laws of the State of New York, but it is unknown to Plaintiff whether Safeway and the City of New Rochelle entered into a non-exclusive Agreement that would allow Safeway to perform booting services on both private and public real property. *See* "Agreement" between The City of New Rochelle and Safeway Towing, (**Exhibit D**), which does not convey whether Safeway can tow in both private and public lots, which would give Safeway an opportunity to monopolize towing and booting within the City of New Rochelle.

16. Plaintiff disputes the statements of this paragraph concerning the Agreement made between Safeway Towing and the City of New Rochelle. The Agreement only provides that "the contractor shall provide booting services utilizing wheel immobilizer boots as directed by the New Rochelle Police Department". It does not discuss permitting Safeway to boot a vehicle on public property only after contacting a police officer for authorization, nor does it discuss the requesting officer to sign receipts for booting services like Defendants are stating it does in Ex. D, Agreement at Exhibit A, Part IV. Plaintiff does not dispute that the Agreement gave Safeway $35 to boot and remove a vehicle and $75 to boot and tow a vehicle from public property. However, the language of the Agreement is not clear because it is unknown to Plaintiff how a vehicle

can be booted and removed without towing it. *See* "City of New Rochelle New York Request for Proposal, Motor Vehicle Towing, Storage, and Related Services", (**Exhibit E**).

17. No dispute

18. No dispute

February 3, 2012 Incident

19. No dispute

20. Plaintiff disputes the statements of this paragraph concerning warning signs at the entrance of the CVS parking lot at 625 North Avenue, New Rochelle, New York. Defendants state that there were no warning signs at the entrance to the lot setting forth the information required by City Code § 316-3.1(A). Defendants base this statement on the Plaintiff's Deposition 1 at 83: 10-12, 83: 20-22. However, the information found within those pages and lines of the deposition relate to the dispute of where exactly the sign was supposed to be, and if the sign should be closer to the street. The information does not clearly state that there wasn't a sign in the entrance to begin with. *See* Plaintiff Dep. 1 (**Exhibit F**), at 83:10-12, 83: 20-22. The information found within the Plaintiff's second deposition at 61: 4-6, and 62:14-18, does not relate to whether there was a sign on the entrance like the Defendants state it does. See Plaintiff's Dep.2 (**Exhibit G**), at 61:4-6, 62:14-18

21. Plaintiff does not dispute that the sign on the lot listed the booting fee as $65 over a sign previously erected by Safeway, but no consideration is given to the fact that it was an old sign conveying the price for the removal of a boot since the price was

amended in 1991. Although plaintiff's sign displayed the older fee, plaintiff was not charging the displayed amount and was charging the new $45 fee for booting vehicles. *See* Ex. F (Plaintiff's Dep. 1) at 72: 14-15.

22. No dispute

23. No dispute

24. No dispute

25. No dispute

26. Plaintiff disputes that he did not have an explanation for the basis of his belief, on the matter of the officers trying to issue him a city code. Plaintiff testified that the officers wanted him to remove a boot because of a warning sign not being in the "proper place", or else they would arrest him, Ex. F (Plaintiff's Dep. 1), at 83: 2-12. That is sufficient information to believe that the officers would try to issue him a city code if plaintiff did not comply with the demand. Plaintiff does not dispute that the officers told him not to boot more vehicles in the lot that night "because the sign is not where it's supposed to be". Plaintiff does not dispute that he was told he could not work that night until he put a sign closer to the CVS parking lot entrance. *See* Ex. F (Plaintiff's Dep. 1), at 83: 10-24.

27. No dispute

28. Plaintiff disputes that this is a statement in contrast of Plaintiff's testimony, regarding Sergeant Conca ordering other officers to tell CVS employees that plaintiff had to have his signs closer to the entrance. Sergeant Conca testified that he did not speak to CVS employees himself, but he had Officer Schlesinger speak to them and

that the employees were issued a warning, (**Exhibit H**), Sergeant Conca's Dep., at 31: 23-32:3. The testimony of Plaintiff and Sergeant Conca are not in contrast of each other.

29. Plaintiff does not dispute the testimony of Sergeant Conca not being able to recall whether Safeway had any signs in the lot, or whether he has given any citations to Safeway employees. However, Sergeant Conca testified that he was familiar with that lot from going there in order to fulfill his duties as a New Rochelle Police Officer. There is no explanation as to why Sergeant Conca has never seen an improperly placed Safeway sign if he is familiar with the lot. *See* Ex. H (Conca Dep.) at 30:22-31:2.

30. No dispute

31. No dispute

32. Plaintiff does not dispute that he never filed a written complaint after the February 3, 2012 accident. However, Plaintiff verbally complained to the police department several times, and was not led to believe by any of the officers responding to his verbal complaint, that he needed to file a written complaint. *See* Ex. F (Plaintiff's Dep. 1) at 86:13-87:7.

The 2012 and 2013 Amendments to City Code Chapter 316

33. No dispute

34. No dispute

35. No dispute

36. No dispute

37. No dispute

38. No dispute

39. No dispute

40. No dispute

41. No dispute

Plaintiff's Alleged Interactions with Non-Parties the City Council and the City Clerk's Office

42. No dispute

43. No dispute

44. Plaintiff does not dispute that he listed his personal address as the address of his towing lot on one of his applications. However, Defendants fail to mention that he had listed another legitimate towing yard address on a previous application that had been sitting in a safe within the police department, which had prevented him from working for about three months. *See* Ex. F (Plaintiff's Dep. 1) at 151:17-152:7.

45. No dispute

46. No dispute

47. No dispute

48. Plaintiff does not dispute that his booting license expired on October 31, 2014. Plaintiff disputes that he submitted an application to renew his license on November 7, 2014. Plaintiff testifies that he does not remember when he renewed his application and did not give a direct answer to the question regarding renewal in this part of the deposition like the Defendants claim it does. *See* Ex. F, (Plaintiff's Dep. 1) at 49:23-50:12. Plaintiff does not dispute that he booted during part of the time when he did not have a valid permit to boot vehicles in the City of New Rochelle. However, he only booted vehicles for a small fraction of the time that he was waiting for the City Clerk to approve the renewal of his license. Plaintiff booted without a valid permit for a couple of

days out of fear that his renewal application would be "lost", and that he would be out of work for months, like on his previous license application. *See* Ex. F, (Plaintiff's Dep. 1) at 50:17-51:3.

49. No dispute

The March 2, 2013 Incident

50. Plaintiff does not dispute that he did not have a written agreement with the owner of the property at 466 Main Street to boot vehicles on that lot, as required by City Code § 316-3.1(F). However, Plaintiff had been booting vehicles on that property for many years and had a verbal agreement with the owner of the property, which was the only previous requirement. *See* Ex. F, (Plaintiff's Dep. 1) at 94:23-95:4.

51. No dispute, however, there is no information in Plaintiff's Dep. 1 at 6-9 regarding this incident, like the Defendants have pointed out. *See* Ex. F, (Plaintiff's Dep. 1), at 6-9.

52. No dispute

53. No dispute

54. No dispute. However, the Plaintiff's testimony and Sergeant Inzeo's testimony (**Exhibit I**), regarding the March 2, 2013 incident display inconsistent facts, which should be brought to, and decided by a judge or a jury. *See* Ex. I (Inzeo Dep.) at 31:25-32:6 and Ex. F, (Plaintiff's Dep. 1) at 98:7-22.

The July 12, 2013 Incident

55. Plaintiff does not dispute that he booted a vehicle on a private lot across the street from 99 Union Avenue, New Rochelle, New York. Plaintiff does not dispute that he removed the license plates from the car. Plaintiff does not dispute that there was

no written contract authorizing him to boot vehicles in any part of the lot, however, plaintiff was booting the car out of a family dispute, and not for business, which makes the fact that Safeway had signs on the lot, and that the plaintiff didn't have a contract to boot in the lot irrelevant. Plaintiff does not dispute that Felicia Rosebaum arrived at the scene and claimed ownership of the car when Officer Siller and Castiglia were called in. Plaintiff does not dispute that that he told the officers that the car was the subject of a dispute in Surrogate's Court, but the matter had not been filed yet. However, the ownership of the car was indeed a matter to be resolved by the Surrogate Court, and the car was not illegally parked. Therefore, the officers had no authority to allow plaintiff's sister to drive off with the vehicle unless proper documentation regarding a transfer of ownership, or court order was produced to them. *See* Ex. F, (Plaintiff's Dep. 1) at 105:12-108:7. The officers did not disclose to plaintiff what kind of documentation had been produced to them regarding the ownership of the car, but ordered the plaintiff to remove the boot and allowed plaintiff's sister to drive off without license plates anyway. *See* Ex. F, (Plaintiff's Dep. 1) at 110:19-111:10.

56. No dispute

57. No dispute. However, the Plaintiff's testimony regarding disclosing information about the plaintiff's brother paying for the parking space is inconsistent with the testimony of Officer Siller (**Exhibit J**). *See* Ex. J, (Siller Dep.) at 21:25-22:3 and Ex. F, (Plaintiff's Dep. 1) at 109:15-25. The inconsistency in testimony should be brought to, and decided by a judge or a jury.

58. No dispute to the events that occurred later on July 17, 2013. However, Officer Castiglia's report states that plaintiff's sister had presented him with notarized

letters showing the car had been willed to her. No matter regarding the distribution of the estate had been commenced at the time, which creates a lack of belief that Officer Castiglia was given proper paperwork to authorize the removal of the vehicle. *See* (**Exhibit K**), Deposition of Kyle Wilson, taken February 11, 2015, at 20:19-23.

59. No dispute

60. Plaintiff disputes this statement on a basis of inconsistency. Plaintiff's complaint about the incident was regarding the events that took place that day, and did not deal with Plaintiff specifically booting the vehicle in order to prevent Rosenbaum from taking it. Plaintiff testified that he booted the car to keep it safe, not to prevent his sister from taking it. *See* Ex. F, (Plaintiff's Dep. 1) at 109:19-21. Sergeant Wilson would have known this information if he had read plaintiff's complaint, which he failed to do since he was in belief that Plaintiff had booted the vehicle on public property, and had cleared the other Officers of any wrongdoing. *See* Ex. F (Plaintiff's Dep. 1) at 114:22-115:12.

May 2, 2015 Incident

61. Plaintiff disputes the statements concerning the number of boots and the information regarding Plaintiff's phone call to report the boots to the NRPD. Plaintiff had booted three cars, not two, like Defendants claim, and he was also in the process of making the first phone call when an Officer approached him. There is no explanation as to the basis of belief that Plaintiff was intending to make a single phone call to notify the NRPD about all three boots. *See* Ex. G, (Plaintiff's Dep. 2) at 88:6-13.

62. No dispute

63. No dispute

64. No dispute

Procedural History

1. No dispute

2. No dispute

3. No dispute

4. No dispute

5. No dispute

6. No dispute

7. No dispute

8. No dispute

9. On November 16, 2016, defendants filed their motion for summary judgment and a statement of undisputed facts pursuant to Local Rule 56.1.

10. On December 30, 2016, plaintiff filed a motion to oppose summary judgment and a Local Rule 56.1 statement in opposition to the undisputed facts.

WHEREFORE, for the reasons set forth in the accompanying memorandum of law, plaintiff's claim does not fail as a matter of law and the City Defendant's motion for summary judgment should not be granted.

Dated: White Plains, New York
December 30, 2016

Respectfully submitted,

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